

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PEGGY GENTRY

Claimant

VS.

HALLMARK CARDS, INC.

Respondent

Self-Insured

)
)
)
)
)
)
)

Docket No. 1,006,896

ORDER

Claimant appeals the February 17, 2003 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was denied benefits after the Administrative Law Judge found that claimant did not meet with personal injury by accident arising out of and in the course of claimant's employment with respondent.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of her employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant alleges accidental injury to her low back caused by sitting at her desk working for respondent for long periods of time. Respondent, on the other hand, contends that claimant's evidence does not support the method of injury. First, respondent cites the medical reports of orthopedic surgeon Kenneth Gimple M.D., wherein he states that claimant's symptoms were made worse by her work activities and also by her activities of daily living. Respondent next cites claimant's testimony that her back problems were made worse by everything she did from a physical nature. Additionally, respondent points to the medical reports of Robert F. Rusnak, D.C. The medical reports of Dr. Rusnak dated August 15, 2002, and signed by claimant, showed in two places that her accident to her low back occurred while lifting a picnic table when mowing. These forms, completed by claimant, make no mention of any work-related activities causing her problems.

In workers' compensation litigation, it is claimant's burden to prove to her entitlement to benefits by a preponderance of the credible evidence.¹

The Board finds that claimant has failed to prove that her injuries to her low back resulted from activities occurring out of and in the course of her employment with respondent. The medical evidence, instead, supports a finding that claimant suffered injuries unrelated to her work. The Board, therefore, finds that the Order of the Administrative Law Judge denying claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated February 17, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2003.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
John D. Jurcyk, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Director, Division of Workers Compensation

¹ K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).